

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANIBAL MELENDEZ, :
: Petitioner, :
: v. : Civ. Act. No. 04-1537-SLR
: :
THOMAS CARROLL, :
Warden, :
: Respondent. :
:

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, the respondent moves for an extension of time in which to file an answer to the petition. In support thereof, the respondent states the following:

1. The petitioner, Anibal Melendez, has applied for federal habeas relief challenging an April 2002 conviction in the Superior Court by guilty plea, shortly before the start of his capital murder trial, to second degree murder and related offenses. (D.I. 2). In June 2002, the court sentenced Melendez to a total of 48 years in prison. The conviction stemmed from Melendez's ambush-style murder of Andre Mercado in which Melendez fired multiple gunshots into Mercado's car, killing him and injuring his passenger Jasmine Pizzaro. Melendez did not file a direct appeal. In January 2003, Melendez sought state relief under Criminal Rule 61. The Superior Court denied relief in a 34-page opinion, and the decision was affirmed on appeal. *Melendez v. State*, 2004 WL 1965650 (Del.); *State v. Melendez*, ID No. 0104020056 (Del. Super. Dec. 19, 2003). By the terms of the Court's order, the answer to the petition is due to be filed on or before April 11, 2005.

2. Due to case load and various other matters, undersigned counsel needs additional time to file and prepare an answer to the petition. Upon return from two weeks of paternity leave in February, counsel among other assignments had argument in the state supreme court on Wednesday March 2, 2005, filed a brief on March 8, 2005 in a habeas case pending on appeal in the Third Circuit, filed a supplemental memorandum in the state supreme court and another supplemental memorandum in the Superior Court on March 14, 2005, filed an answering brief in the state supreme court on March 17, 2005, and filed an answer in another habeas case on March 31, 2005. Counsel missed several days of work at the end of March due to illness. Finally, counsel working with other prosecutors today filed an 84-page answering brief in a capital case pending on direct appeal in the state supreme court. Because of this work load and absence from the office, counsel requires the additional time to prepare the answer in this case.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is the respondent's first request for an extension of time in this case. The requested extension will not result in any prejudice to the petitioner.

5. In light of the above, the respondent submits that an extension of time of approximately one month to and including May 6, 2005 is reasonable.

/s/ Thomas E. Brown

Thomas E. Brown
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar ID# 3278

Date: April 8, 2005

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FOR THE DISTRICT OF DELAWARE**

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: :
THOMAS CARROLL, :
Warden, :
: :
Respondent. :
:

O R D E R

This _____ day of _____, 2005,

WHEREAS, respondent having requested an extension of time in which to file an answer to the petition for a writ of habeas corpus, and

WHEREAS, it appearing to the Court that the request is timely and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondent's answer shall be filed on or before May 6, 2005.

United States District Judge

CERTIFICATE

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ Thomas E. Brown
Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondent

Date: April 8, 2005

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of this Court, hereby certifies that on April 8, 2005 he caused to be electronically filed a Motion for Extension of Time with the Clerk of the Court using CM/ECF and also caused to be mailed by first class U.S. Mail two copies of the document to the following non-registered participant, the petitioner:

Anibal Melendez (No. 337929)
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977.

/s/ Thomas E. Brown

Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondents

Date: April 8, 2005